IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.129 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
HINTEX MILLS - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 29/09/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following question

under Section 256(2) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that an expenditure of Rs.41,309/- made by the assessee towards payment to the Gujarat State Industrial Development Corpn. for the plot was a revenue expenditure?"

2. The Assessment Year is 1982-83 and the relevant accounting period is Samvant Year 2037. The assessee claimed payment of a sum of Rs.41,309/- which was allowed by the Assessing Officer while framing assessment under Section 143(3) of the Act. The Commissioner of Income-tax assumed jurisdiction under Section 263 of the Act and after hearing the assessee came to the conclusion that the assessment order was erroneous and prejudicial to the interests of the Revenue as the Assessing Officer had failed to treat the aforesaid expenditure of Rs.41,309/- as capital expenditure.

3. The assessee carried the matter in appeal before the Tribunal. The Tribunal, by its impugned order dated 9th September, 1985, allowed the appeal. It has been held by the Tribunal that similar expenditure was incurred by the assessee for subsequent year viz. Assessment Year 1983-84 and no revisional action had been initiated. It is further found by the Tribunal that the assessee had not purchased the land from GIDC but had entered into the land as a licensee. Therefore, the expenditure was incurred by the assessee by way of charges for carrying on business at Pandesara.

4. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue. He urged that the Tribunal had committed an error in disturbing the order made by the Commissioner of Income-tax. Reiterating the reasons, which weighed with the Commissioner of Income-tax while passing the order under Section 263 of the Act, Mr.Bhatt submitted that the Tribunal's

order be reversed and the question be answered in favour of the Revenue.

5. Though, Mr. Bhatt has cited certain authorities for the reasons stated hereinafter, it has not been found necessary to enter into any discussion of law.

6. As already noticed hereinbefore, on identical facts and circumstances similar expenditure incurred by the assessee for subsequent Assessment Year has been allowed by the Revenue itself as a revenue expenditure and the assessment has become final. The finding of fact recorded by the Tribunal that the payment was made to GIDC by the assessee in the character of a licensee remains undisturbed. Once this is the position, it is not possible to find any infirmity in the impugned order of the Tribunal considering the fact that the Tribunal has also found that the expenditure was incurred for carrying on business and not for the purposes of establishing the business.

7. In the result, the question referred to the Court is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

8. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**